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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,991	10/10/2001	Ping Wai Wan	78945-27 /jlo	4768
29382	7590	09/08/2005	EXAMINER	
TROPIC NETWORKS INC. DR. VICTORIA DONNELLY 135 MICHAEL COWPLAND DRIVE KANATA, ON K2M 2E9 CANADA			PAYNE, DAVID C	
			ART UNIT	PAPER NUMBER
			2638	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/972,991

Applicant(s)

WAN ET AL.

Examiner

David C. Payne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. **10067748**.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

For example, regarding claim 1 in the instant application ('991 application), the '748 application claims:

A method of identifying and detecting channels in a multiplexed communications network, comprising the steps of: modulating each channel to be identified with a respective combination of at least two continuous dither tones; and detecting the dither tones to detect said channels, the step of detecting the dither tones comprising performing a frequency analysis operation to detect dither tones of a channel having a relatively high power, and performing coherent averaging of the frequency analysis results over a plurality of frequency analysis operations to detect dither tones of a channel having a relatively low power. (claim 1). The '748 application claims performing frequency analysis operation rather than a FFT (Fast Fourier Transform) operation as in the instant application. However It would have been obvious to one of ordinary skill in the art at the time of invention that FFT techniques are well known frequency analysis operations. Furthermore, claim 3 of the '748 application claims specifically a FFT (Fast Fourier Transform) operation.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-33 of copending Application No. **10263959**.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

For example, regarding claim 1 in the instant application ('991 application), the '959 application claims:

A method of identifying and detecting channels in a multiplexed communications network, comprising the steps of: modulating each channel to be identified with a respective combination of at least two continuous dither tones; and detecting the dither tones to detect said channels, the step of detecting the dither tones comprising performing a frequency analysis operation to detect dither tones of a channel having a relatively high power, and performing coherent averaging of the frequency analysis results over a plurality of frequency analysis operations to detect dither tones of a channel having a relatively low power. (claim 1). The '959 application claims performing frequency analysis operation rather than a FFT (Fast Fourier Transform) operation as in the instant application. However It would have been obvious to one of ordinary skill in the art at the time of invention that FFT techniques are well known frequency analysis operations. Furthermore, claim 3 of the '959 application claims specifically a FFT (Fast Fourier Transform) operation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-53 of copending Application No. **10259290**.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

For example, regarding claim 6 in the instant application ('991 application), the '290 application claims:

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A system for identifying an optical channel in an optical network, comprising: means for marking the channel with a unique combination of two or more identification tags, the combination of identification tags being referred to as a channel signature, to identify the channel in the network; and means for detecting the channel signature at various locations in the network. (claim 12) and,

A system as described in claim 13, wherein the encoder includes one of the following means for modulating the tones onto the channel: (a) means for modulating the tones simultaneously; (b) means for modulating the tones consecutively; and (c) means comprising a combination of (a) and (b). (claim 14)

While the '290 application does not claim a cyclically repeating sequence of tones with a predetermined periodicity, It would have been obvious to one of ordinary skill in the art at the time of invention that a combination of unique tones modulated consecutively as claimed would be cyclically repeating.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of copending Application No. **10452511**.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

For example, regarding claim 1 in the instant application ('991 application), the '511 application claims: A method for identifying an optical channel in an optical network, comprising the steps of: marking the channel with a unique combination of two or more identification tags, the combination of identification tags being referred to as a channel signature, to identify the channel in the network; and detecting the channel signature at various locations in the network. (claim 1) A method as described in claim 3, wherein the step of modulating comprises modulating the tones onto the channel in one of the following ways: (a) modulated simultaneously; (b) modulated consecutively; and (c) modulated by using a combination of (a) and (b). (claim 5)

While the '511 application does not claim a cyclically repeating sequence of tones with a predetermined periodicity, It would have been obvious to one of ordinary skill in the art at the time of invention that a combination of unique tones modulated consecutively as claimed would be cyclically repeating.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp


David C. Payne
Patent Examiner
AU 2638